

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 26, 2013 at 10:00 a.m.

No written opposition has been filed to the following motions set for argument on this calendar:

7, 9, 10, 14, 16, 17, 18, 19, 25

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions. If you wish to oppose the motion, tell Judge McManus there is opposition. Please do not identify yourself or explain the nature of your opposition. If there is opposition, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

If there is no opposition, the moving party should inform Judge McManus if it declines to accept the tentative ruling. Do not make your appearance or explain why you do not accept the ruling. If you do not accept the ruling, Judge McManus will hear from you when he calls the motion for argument.

If no one indicates they oppose the motion and if the moving party does not reject the tentative ruling, that ruling will become the final ruling. The motion will not be called for argument and the parties are free to leave (unless they have other matters on the calendar).

MOTIONS ARE ARRANGED ON THIS CALENDAR IN TWO SEPARATE SECTIONS. A CASE MAY HAVE A MOTION IN EITHER OR BOTH SECTIONS. THE FIRST SECTION INCLUDES ALL MOTIONS THAT WILL BE RESOLVED WITH A HEARING. A TENTATIVE RULING IS GIVEN FOR EACH MOTION. THE SECOND SECTION INCLUDES ALL MOTIONS THAT HAVE BEEN RESOLVED BY THE COURT WITHOUT A HEARING. A FINAL RULING IS GIVEN FOR EACH MOTION. WITHIN EACH SECTION, CASES ARE ORGANIZED BY THE LAST TWO DIGITS OF THE CASE NUMBER.

ITEMS WITH TENTATIVE RULINGS: IF A CALENDAR ITEM HAS BEEN SET FOR HEARING BY THE COURT PURSUANT TO AN ORDER TO SHOW CAUSE OR AN ORDER SHORTENING TIME, OR BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(1) OR LOCAL BANKRUPTCY RULE 9014-1(f)(1), AND IF ALL PARTIES AGREE WITH THE TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS AND CONCLUSIONS.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(2) OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER.

August 26, 2013 at 10:00 a.m.

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON SEPTEMBER 23, 2013 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY SEPTEMBER 9, 2013, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 16, 2013. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

ITEMS WITH FINAL RULINGS: THERE WILL BE NO HEARING ON THE ITEMS WITH FINAL RULINGS. INSTEAD, EACH OF THESE ITEMS HAS BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING ALSO WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

ORDERS: UNLESS THE COURT ANNOUNCES THAT IT WILL PREPARE AN ORDER, THE PREVAILING PARTY SHALL LODGE A PROPOSED ORDER WITHIN 14 DAYS OF THE HEARING.

MATTERS FOR ARGUMENT

1. 13-27100-A-7 FORTUNATO/SANDRA GARCIA MOTION TO
JM-1 COMPEL ABANDONMENT
7-17-13 [27]

Tentative Ruling: The motion will be denied without prejudice.

The debtor moves for abandonment of a sole proprietorship janitor business. However, neither the motion nor supporting declaration identifies the assets of the business. Directing the court to the schedules without identifying the assets and telling the court which assets are encumbered and/or exempt, and to what extent they are encumbered and/or exempt, invites the court to speculate about which assets belong to the business. The court should not have to speculate about the assets of the business. The motion will be denied.

2. 13-28204-A-7 MADELIN DRUSE ORDER TO
SHOW CAUSE
8-9-13 [32]

Tentative Ruling: The motion for relief from stay, DCN MDC-1, will be dismissed.

Creditor Marjorie Craft did not pay the filing fee of \$176 for a motion for relief from the automatic stay as prescribed by 28 U.S.C. § 1930(b). This is cause for dismissal of the motion.

3. 13-28204-A-7 MADELIN DRUSE MOTION FOR
MDC-1 RELIEF FROM AUTOMATIC STAY
MARJORIE CRAFT VS. 8-1-13 [30]

Tentative Ruling: The motion will be dismissed without prejudice.

As the movant has not paid the filing fee for this motion, the motion will be dismissed without prejudice. If the movant pays the filing fee before the August 26, 2013 hearing on the motion, the court will continue the hearing on the motion so it can adjudicate the motion. In the event the hearing on the motion is continued, the record is closed and no one may file any further papers in connection with the motion.

4. 12-38515-A-7 CHARLES WEST MOTION TO
DMW-1 SELL
7-26-13 [82]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for \$5,000 the estate's interest, if any, in mineral rights located in the unincorporated area of El Dorado County, known as the Alhambra Quarts Mine, Mineral Entry No. 898, to Western Foothill Mortgage. The buyer will pay all closing costs. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

The debtor opposes the motion, contending that the "motion fails to address the secured interests created by the secured interest created by the deed set forth within" on the property. The debtor also complains that there is no evidence with the motion and that the docket control number on the motion is incorrect.

The court rejects the debtor's objections as the sale is subject to any and all

liens or interests and does not implicate 11 U.S.C. § 363(f). Also, the court does not need any evidence with the motion as the trustee is selling only the estate's interest in the rights, to the extent the estate has any interest in the rights. The trustee is not saying by this motion that the estate has an interest in the mineral rights or what is that interest. The sale is "as is," "where is" and without any warranties or representations. And, even if the trustee used the wrong docket control number on this motion, the debtor has not been prejudiced.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h).

5. 11-25725-A-7 MATT/RITA OMARY MOTION TO
SCF-3 SELL
7-26-13 [68]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for \$31,933.38 the estate's interest in an unencumbered commercial condominium in Tracy, California to the debtors. The value of the property is \$89,280, but the sale price will pay all timely-filed claims against the bankruptcy estate.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate sufficient funds to pay all timely-filed claims in full. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate.

6. 12-41025-A-7 PATRICK MULLIN MOTION TO
CWC-4 APPROVE COMPENSATION OF TRUSTEE'S
ATTORNEY (FEES \$1,837.50, EXP.
\$513.00)
7-19-13 [33]

Tentative Ruling: The motion will be granted in part.

Huisman Auctions, auctioneer for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$1,837.50 in fees (based on a 15% commission) and \$513 in expenses, for a total of \$2,350.50. The movant asks also for the court to approve a 10% buyer's premium it collected from the purchasers.

This motion is for a sale completed on March 16, 2013. The court approved the movant's employment as the trustee's auctioneer on January 2, 2013.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included the sale of six vehicles, including motorcycles, trailers, ATVs, and a boat.

The court will not approve the reimbursement of \$513 in sale costs as the order approving the employment of the movant refers to the terms of employment in the application, which says that "[t]he Auctioneer is to receive a commission of 15% of the gross auction sales proceeds. Included in the commission will be

necessary expenses including, but not limited to: transportation, storage, inventory, security, advertising, and other costs of sale." Docket 17; Docket 14 at 2. In other words, the sale costs were subsumed in the 15% commission.

The court concludes that the remainder of the compensation, including the 10% buyer's premium, is for actual and necessary services rendered in the administration of this estate. That compensation will be approved. The motion will be granted in part.

7. 13-29225-A-7 JENNIFER NAVICKY MOTION FOR
DJP-1 RELIEF FROM AUTOMATIC STAY
EDUCATIONAL EMPLOYEES CREDIT UNION VS. 8-8-13 [9]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Education Employees Credit Union, seeks relief from the automatic stay with respect to a 2011 Honda Odyssey. The vehicle has a scheduled value of \$32,000 and its secured claim is approximately \$57,196.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on August 14, 2013. And, the debtor surrendered the vehicle to the movant pre-petition, on July 3, 2013. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived due to the fact that the movant has possession of the vehicle and it is depreciating in value.

8. 10-20029-A-7 BUALAI WHITE MOTION TO
DNL-5 SELL
8-5-13 [180]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for \$5,000 the estate's interest 50% interest in a real property in Rio Linda, California to Housing Group Funding Corporation. The sale is as is, where is, without any warranties or representations, and subject to any and all liens or interests against the property. The buyer will pay all closing costs.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate.

9. 10-20029-A-7 BUALAI WHITE MOTION TO
DNL-6 ABANDON
8-12-13 [185]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The trustee wishes to abandon the estate's interest in five real properties, having the following values, encumbrances and/or exemptions:

- Opal Lane, Sacramento (value of \$20,000 with \$20,000 exemption claim)
- Guildford Way, Plumas Lake (value of \$227,500 with \$444,249 of encumbrances)
- Plumas Arboga Road, Marysville (value of \$159,000 with \$343,119 of encumbrances)
- Forest Street, Sacramento (value of \$165,000 with \$229,200 of encumbrances),
- Gratia Avenue, Sacramento (value of \$141,000 with \$327,996 of encumbrances).

11 U.S.C. § 554(a) provides that a trustee may abandon any estate property that is burdensome or of inconsequential value or benefit to the estate, after notice and a hearing.

Given the respective values and encumbrances or exemptions against the properties, the court concludes that they are of inconsequential value to the estate. The motion will be granted.

10. 13-24630-A-7 LOUON SISON
JAB-2
EAGLE CREDIT UNION VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-12-13 [19]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted in part and dismissed as moot in part.

The movant, Eagle Credit Union, seeks relief from the automatic stay as to a real property in Stockton, California.

Given the entry of the debtor's discharge on July 29, 2013, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of \$78,529 and it is encumbered by claims totaling approximately \$203,814. The movant's deed is in first priority position and secures a claim of approximately \$134,427.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on May 16, 2013.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders

terminating the automatic stay.

11. 13-26333-A-7 DIANA PREVETTE MOTION FOR
LC-1 ENTRY OF DISCHARGE AND FOR
EXEMPTION FROM FINANCIAL
MANAGEMENT COURSE
7-23-13 [14]

Tentative Ruling: The motion will be granted in part.

The debtor's attorney in fact, Patricia Pervette, asks the court to waive the requirement for the debtor to complete an instructional course on personal financial management before obtaining discharge, and for an order directing the entry of discharge. The debtor passed away on May 8, 2013, one day after the filing of the instant petition.

Because the debtor is deceased, the court will waive the requirement. However, the court will not order that the discharge be entered. The entry of chapter 7 discharge happens automatically, upon fulfillment of all conditions for such discharge. The motion will be granted in part.

12. 13-30335-A-7 ANGELA GALLARDO ORDER TO
SHOW CAUSE
8-7-13 [11]

Tentative Ruling: The petition will be dismissed.

The debtor did not pay the petition filing fee of \$306, as required by Fed. R. Bankr. P. 1006(a), and did not apply to pay the fee in installments. This is cause for dismissal. See 11 U.S.C. § 707(a)(2).

13. 11-41338-A-7 ERNESTO CABALLERO MOTION TO
DNL-2 SELL
7-29-13 [91]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for \$105,000 the estate's interest in a real property in Fairfield, California to the debtor. The property has been valued by the debtor at \$113,000, has no encumbrances and is subject to an exemption claim in the amount of \$1,818.09 under Cal. Civ. Proc. Code § 703.140(b)(5). The sale is subject to "all known or unknown encumbrances, liens, or claims."

The sale will generate some proceeds for distribution to creditors of the estate. The sale is in the best interests of the creditors and the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b).

14. 13-28141-A-7 SUSAN WHITMAN MOTION TO
HLG-1 COMPEL ABANDONMENT
7-23-13 [13]

Tentative Ruling: The motion will be granted.

The debtor seeks to compel the trustee to abandon the estate's interest in her flower shop business, My Flower Shop.

The trustee has filed a non-opposition.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

According to the motion, the business assets include a refrigeration compressor, counter, cash register, tablet computer, two folding tables and three display shelves, inventory of flowers, greenery, vases, ribbons, baskets and other floral supplies, as listed in item 29 of Schedule B. The assets have an aggregate value of \$2,200 and have been claimed fully exempt in Schedule C. Given the exemption claim, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

15. 09-42342-A-7 JAMES/KATHRYN BAGGARLY MOTION TO
DNL-7 APPROVE COMPENSATION OF SPECIAL
COUNSEL (FEES \$9,000, EXP.
\$16,000)
7-29-13 [96]

Tentative Ruling: The motion will be granted in part and denied in part.

Brown, White & Newhouse, special counsel for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$9,000 in fees (based on a 20% contingency fee arrangement) and \$9,017.07 in post-petition expenses, for a total of \$18,017.07. In addition, the movant asks the court to approve \$22,204.63 in pre-petition expenses as an administrative claim under 11 U.S.C. § 503(b)(1). The expenses were incurred from January 18, 2008 through May 31, 2013. This case was filed on October 14, 2009. The court approved the movant's employment as the trustee's special counsel on January 7, 2010.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, representing the estate in the litigation and settlement of the debtors' claims against Western Pacific Housing, Inc. and DR Horton, Inc.

The court cannot approve any fees to the movant based on a contingency fee arrangement because, as noted in the court's ruling of July 15, 2013, the order approving the movant's employment (Docket 38) provides only for lodestar, hourly compensation.

More, the court cannot approve pre-petition expenses as an administrative claim under 11 U.S.C. § 503(b)(1).

11 U.S.C. § 503(b) provides that "after notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including- (1) (A) the actual, necessary costs and expenses of preserving the estate." This requires the claim to be (1) incurred post-petition, (2) be an actual and necessary expense, and (3) directly and substantially benefit the estate. In re Lazar, 207 B.R. 668, 674 (Bankr. C.D. Cal. 1997) (citing Gull Indus., Inc. v. John Mitchell, Inc. (In re Hanna), 168 B.R. 386, 388 (B.A.P. 9th Cir. 1994) and Burlington N. R.R. Co. v. Dant & Russell (In re Dant & Russell), 853 F.2d 700, 706 (9th Cir. 1988)).

The claim for administrative expenses cannot be incurred pre-petition as there could not have been a benefit to the estate at that time. There was no

bankruptcy estate before the filing of the petition.

The court will approve reimbursement of the post-petition expenses, nevertheless. The motion will be granted in part.

16. 13-26551-A-7 MICHAEL HOLT MOTION TO
SLF-9 ABANDON
8-9-13 [93]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The trustee wishes to abandon the estate's interest in the following property:

- 2009 VW Jetta vehicle; value of \$11,000 but it is over-encumbered,
- 2001 Chevrolet Silverado 1500 with 188,000 miles on it; value of approximately \$2,500 but the vehicle has been impounded in the San Diego area (as of July 25, impound fees totaled \$609),
- 2004 Chevrolet Trail Blazer; value of approximately \$4,000, but location of the vehicle is unknown,
- 50% interest in a condominium in Las Vegas, Nevada; scheduled value of 50% interest is \$200,000 but the sole secured creditor submitted an appraisal with its stay relief motion showing that the value of the entire property is \$200,000. The trustee is concerned also about tax consequences resulting from an impending foreclosure of the property.

11 U.S.C. § 554(a) provides that a trustee may abandon any estate property that is burdensome or of inconsequential value or benefit to the estate, after notice and a hearing.

Given the respective value, condition, location and encumbrance(s) against each property item above, the court concludes that all items are of inconsequential value to the estate. The motion will be granted.

17. 12-33467-A-7 RONALD DUNCAN MOTION FOR
CJO-1 RELIEF FROM AUTOMATIC STAY
ONEWEST BANK, F.S.B. VS. 8-12-13 [126]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the

court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, OneWest Bank, seeks relief from the automatic stay as to a real property in North Highlands, California. The property has a value of \$130,000 and it is encumbered by claims totaling approximately \$202,137. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

18.	12-35168-A-11	GOVERNMENT TECHNOLOGY	MOTION FOR
	FWP-1	SOLUTIONS, INC.	ADMINISTRATIVE EXPENSES
			8-14-13 [179]

Tentative Ruling: The motion will be granted.

Creditor General Dynamics Fidelis Cybersecurity Solutions, Inc., asks the court to approve and compel the payment of a \$135,514.36 administrative claim for goods and services provided to the debtor post-petition, starting on September 6, 2012, when the debtor placed an order with Fidelis. Fidelis provided equipment and installation and consulting services to the U.S. Department of Agriculture on account of the debtor's contract with the Department.

11 U.S.C. § 503(b) provides that "after notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including- (1) (A) the actual, necessary costs and expenses of preserving the estate." This requires the claim to be (1) incurred post-petition, (2) be an actual and necessary expense, and (3) directly and

substantially benefit the estate. In re Lazar, 207 B.R. 668, 674 (Bankr. C.D. Cal. 1997) (citing Gull Indus., Inc. v. John Mitchell, Inc. (In re Hanna), 168 B.R. 386, 388 (B.A.P. 9th Cir. 1994) and Burlington N. R.R. Co. v. Dant & Russell (In re Dant & Russell), 853 F.2d 700, 706 (9th Cir. 1988)).

This case was filed on August 18, 2012. Fidelis did not receive notice of the bankruptcy case until on or about June 6, 2013. The order for the provided goods and services was placed by the debtor on September 6, 2012. The full amount owed under the order was \$143,850. The debtor paid \$8,100 on April 29, 2013. As testified by the debtor's principal at the August 13, 2013 plan confirmation hearing, Fidelis fulfilled the purchase order. The fulfillment of the order by Fidelis was an actual and necessary expense. It preserved and benefitted the estate as it enabled the debtor to fulfill its contractual obligations to the U.S. Department of Agriculture. Given this, the court concludes that the unpaid balance under the purchase order is an administrative expense claim. The claim must be paid on the plan's effective date, as Fidelis has not waived its rights under 11 U.S.C. § 1129(a)(9)(A). See, e.g., Communications, L.L.C. v. Alaska Railroad Corp. (In re WCI Cable, Inc.), 274 B.R. 529, 542 n.2 (Bankr. D. Or. 2002).

19.	12-30076-A-7 TIMOTHY/MARIE BANKUS KKY-1 OPERATING ENGINEERS LOCAL UNION #3 FEDERAL CREDIT UNION VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 8-7-13 [52]
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Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Operating Engineers Local Union #3 Federal Credit Union, seeks relief from the automatic stay as to a real property in Alta, California. The property has a value of \$225,000 and it is encumbered by claims totaling approximately \$327,152. The movant's deed is in second priority position and secures a claim of approximately \$135,191.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on August 5, 2013. And, in the statement of intention, the debtor has indicated an intent to surrender the property. Docket 48.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for

purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

20. 13-27282-A-7 ADAM BOHNAK

MOTION TO
DISMISS CASE
7-24-13 [27]

Tentative Ruling: The motion will be granted and the case will be dismissed.

The trustee moves for dismissal because the debtor did not attend a meeting of creditors held on July 22, 2013. The court notes also that the debtor did not appear at the only other meeting of creditors held on July 8, 2013.

The debtor's failure to appear at the two meetings of creditors has caused unreasonable delay that is prejudicial to creditors. This is cause for dismissal. See 11 U.S.C. § 707(a)(1).

21. 13-25283-A-7 PATRICK BULMER

MOTION FOR
ISSUANCE OF ARREST WARRANT FOR
PATRICK BULMER FOR VIOLATION OF
TITLE 18 U.S.C. § 1344
7-9-13 [32]

Tentative Ruling: The motion will be denied.

The sole petitioning creditor, Paul Den Beste, asks the court to issue an arrest warrant for Patrick Bulmer, arguing that Mr. Bulmer does not have any judgment or order from any court allowing him to seize the \$66,001.01 Mr. Bulmer seized from the 1997 James L. Den Beste Family Trust.

The court dismissed this involuntary case on July 1, 2013. Docket 29. In dismissing the case, the court adjudicated the authority of and capacity in which Mr. Bulmer seized the \$66,001.01 from the trust. Docket 26. The court will not revisit this issue again, as it has decided it already.

Second, given that this case has been dismissed, this court has no subject matter jurisdiction over any claims asserted or relief requested as to Mr. Bulmer.

Third, to the extent that Mr. Den Beste has any recourse against Mr. Bulmer, it lies in the state court that appointed Mr. Bulmer a receiver. It was in this capacity that Mr. Bulmer acting in doing the things of which Mr. Den Beste complains.

Finally, the bankruptcy court has no authority to act under 18 U.S.C. § 1344, a criminal statute. The district court tries criminal matters.

This motion will be denied.

22. 13-25283-A-7 PATRICK BULMER
SMO-1

MOTION TO
VACATE OR MODIFY COURT'S ORDER AND
FOR ORDER TO RETURN FUNDS TO THE
BANKRUPTCY ESTATE OR TO THE JAMES
DEN BESTE FAMILY 1977 TRUST
7-9-13 [34]

Tentative Ruling: The motion will be denied.

The sole petitioning creditor, Paul Den Beste, asks the court to reconsider or vacate its order dismissing the case.

Mr. Bulmer opposes the motion.

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside an order or a judgment for:

"(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c).

"Relief under Rule 60(b) is discretionary and is warranted only in exceptional circumstances." Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991), cert. denied, 506 U.S. 828 (1992).

"[R]evisiting the issues already addressed 'is not the purpose of a motion to reconsider,' and 'advanc[ing] new arguments or supporting facts which were otherwise available for presentation when the original summary judgment motion was briefed' is likewise inappropriate." Van Skiver at 1243.

This motion is timely, it has been brought within reasonable time. The court entered the order of dismissal on July 1, 2013 and this motion was filed on July 9, 2013, only eight days later.

The movant has not established any basis under Rule 60(b) for the court to vacate or reconsider its dismissal of the case. There is no mistake, inadvertence, surprise, excusable neglect, or newly discovered evidence. No inadvertence, surprise, or excusable neglect have been asserted. There is no newly discovered evidence alleged or presented with this motion. And, there was no mistake by the court in assessing the facts or the law in granting the dismissal.

This motion is merely advancing new or rehashing the arguments the movant advanced in his opposition to the dismissal of the case. The movant attacks

the jurisdiction of the state court to authorize Mr. Bulmer to seize the funds. The movant contends that the funds are within the exclusive and "in rem" jurisdiction of this bankruptcy court and not the state court, as a bankruptcy estate was established when this case was filed. He says it was an error for this court to simply defer to the ruling or order of the state court as the state court determinations are not binding on this court.

To the extent the movant did not present the above arguments in his opposition to the dismissal, he has not explained why he did not assert before, and why this court should give him another opportunity to assert, the arguments in this motion. Rule 60(b) does not give the losing party the right to a "second bite" in re-litigating the issues litigated already.

"[R]evisiting the issues already addressed 'is not the purpose of a motion to reconsider,' and 'advanc[ing] new arguments or supporting facts which were otherwise available for presentation when the original summary judgment motion was briefed' is likewise inappropriate." Van Skiver at 1243. Hence, there is no basis for vacating or reconsidering the dismissal.

To the extent the movant presented the arguments in this motion before, the court still finds no basis to vacate or reconsider the dismissal. The main contention in this motion is that this court erred when it deferred to the rulings and orders of the state court, authorizing Mr. Bulmer to seize the funds in his capacity as a receiver, appointed by the state court.

This court is required to give full faith and credit to the state court rulings, orders and judgments, including the appointment of Mr. Bulmer as receiver and the authorization for him to seize the funds. The court incorporates by reference its ruling granting dismissal in Docket 26. When this case was filed by the movant, a bankruptcy estate was created, but this estate is subject to the limitations of this court's powers, one of those being that this court must give full faith and credit to final rulings, orders and judgments of any state court. This court then did not err in deferring to the state court. Accordingly, this motion will be denied.

23.	11-35193-A-7 J/MARIA CARDENAS	MOTION TO
	TOG-10	CONVERT CASE
		7-22-13 [112]

Tentative Ruling: The motion will be denied with prejudice.

The debtors request conversion from chapter 7 to chapter 13 but the chapter 7 trustee opposes the motion.

Given the Supreme Court's decision in Marrama v. Citizens Bank of Massachusetts, 127 S. Ct. 1105 (2007), before the conversion of a case from chapter 7 to chapter 13, the court must determine that the debtor is eligible for chapter 13 relief. This entails examining whether the debtor is seeking the conversion for an improper purpose or in bad faith, whether the debtor is eligible for chapter 13 relief under 11 U.S.C. § 109(e), and whether there is any cause that might warrant dismissal or conversion to chapter 7 under 11 U.S.C. § 1307(c). See Marrama, 127 S. Ct. at 1112.

Among the eligibility requirements for relief under chapter 13 are the requirements that the debtor must have regular income and owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$383,175 and noncontingent, liquidated, secured debts of less than \$1,149,525. 11 U.S.C. § 109(e).

This is the debtors' sixth motion to convert the case to chapter 13. And, the court has made a determination of bad faith based on the debtors' failure to cooperate with the trustee. The dispute with the trustee has centered on the debtors' real property in Oakland, California. The court adopts the following portion of its August 12, 2013 ruling on the trustee's motion for turnover:

"Although they have exempted \$19,290 in the property (pursuant to Cal. Civ. Proc. Code § 703.140(b)(5)), the debtors do not reside at the property. Docket 80. And, the debtors have a history of failing to cooperate with the trustee in the sale of the property. Despite repeated requests from the trustee for the value and liens on the property, the debtors have been non-responsive. More, the debtors have unsuccessfully attempted to convert the case to chapter 13 five times. In denying the debtors' third conversion motion, this court concluded that 'the debtors' conduct is marked by indicia of bad faith.' Docket 66. The above convinces the court that the debtors are not cooperating with the trustee in the administration of the property. Hence, the court will order the debtors to turn over possession of the property to the estate."

Docket 122.

Given the foregoing, the court concludes that the requested conversion is in bad faith. The motion will be denied.

24. 13-24996-A-7 PATRICK/KRISTI MORIN MOTION TO
BHS-1 SELL
7-19-13 [15]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for \$20,000 the estate's 20% interest in the probate estate of Jeanne E. Glaeser to Gregory Royston. The sale is "as is," "where is," and with no warranties or representations. The probate estate, interest in which is being sold, includes an interest in a real property in Brentwood, California. The real property is subject to a life estate in favor of Helmut Glaeser. The debtors have claimed an \$11,356.84 exemption in their interest in the estate. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h).

The trustee requests also approval of a \$3,000 break-up fee for the buyer, in the event he is overbid.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h). In addition, the court will approve the proposed break-up fee for the buyer.

25. 13-27499-A-7 CESAR/DOMINIQUE VAZQUEZ MOTION FOR
TJS-1 RELIEF FROM AUTOMATIC STAY
JPMORGAN CHASE BANK, N.A. VS. 7-17-13 [9]

Tentative Ruling: The motion will be dismissed as moot.

The movant, JPMorgan Chase Bank, seeks relief from the automatic stay with respect to a 2009 Nissan Frontier vehicle.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a

statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on May 31, 2013 and a meeting of creditors was first convened on July 10, 2013. Therefore, a statement of intention that refers to the movant's property and debt was due no later than June 30. The debtor filed a statement of intention on the petition date, but did not list the vehicle in the statement.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, the debtor did not list the vehicle in the statement of intention. And, no reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on June 30, 2013, 30 days after the petition date.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on August 7, 2013, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on June 30, 2013.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

FINAL RULINGS BEGIN HERE

26. 13-28701-A-7 ERIN HAYES MOTION FOR
DB-1 RELIEF FROM AUTOMATIC STAY
DOWNTOWN PLAZA SACRAMENTO, L.L.C. VS. 7-24-13 [26]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Downtown Plaza Sacramento, L.L.C., seeks relief from the automatic stay with respect to a commercial real property space in Sacramento, California. The debtor has been leasing the property from the movant. The debtor has not made seven pre-petition and one post-petition payments to the movant under the lease agreement.

This is a liquidation proceeding. The estate is not operating and it has no ownership interest in the property as the debtor was leasing it only. The court also notes that the trustee filed a report of no distribution on August 15, 2013. The foregoing is cause for the granting of relief from stay.

Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to proceed with its pending eviction action against the debtor in state court. If the movant prevails, no monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property if such is permitted by the state court.

No fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

27. 12-30911-A-11 VILLAGE CONCEPTS, INC. COUNTER MOTION TO
DNL-4 CONVERT CASE
7-22-13 [165]

Final Ruling: The hearing on this motion has been continued to September 3, 2013 at 10:00 a.m.

28. 12-28413-A-7 F. RODGERS CORPORATION MOTION FOR
VLP-6 RELIEF FROM AUTOMATIC STAY
RMF ENGINEERING, INC. VS. 7-16-13 [515]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially

alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, RMF Engineering, Inc., seeks relief from the automatic stay to proceed against the debtor in two now consolidated state court actions, with their construction defect cross claims. Recovery will be limited to available insurance coverage, if any.

Given that the movant would not seek to enforce any judgments against the debtor or the estate and will proceed against the debtor only to the extent their claims can be satisfied from the debtor's insurance proceeds, the court concludes that cause exists for the granting of relief from the automatic stay. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute the claims against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

No fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived.

29. 13-27715-A-7 CALIFORMACY INC.
WFH-1

MOTION TO
EMPLOY
7-29-13 [47]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee requests approval to employ Wilke, Fleury, Hoffelt, Gould & Birney, LLP as counsel for the estate. Wilke, Fleury will assist the estate with the investigation, liquidation and overall administration of the debtor's assets, including, without limitation, claim analysis and objections and the prosecution of avoidance actions. The proposed compensation is an hourly fee arrangement, based on Wilke, Fleury's current hourly rates.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions."

The court concludes that the terms of employment and compensation are reasonable. Wilke, Fleury is a disinterested person within the meaning of 11

U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

As the movant has represented creditor Cardinal Health in the past, the court reminds the movant to provide the trustee with the notice required by California Rule of Professional Conduct 3-310(B)(3) (mandating that "[a] member shall not accept or continue representation of a client without providing written disclosure to the client where . . . [t]he member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter").

30. 13-23517-A-7 TRACY GATEWAY, L.L.C. MOTION TO
SLF-3 EXTEND TIME
7-12-13 [31]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee moves for a 184-day extension, from July 15, 2013 to January 15, 2014, of the time to assume or reject the debtor's executory contracts, as the trustee needs additional time to review and assess the contracts, which have proven to be complex and time consuming to understand. The trustee's review of the contracts pertains to his administration of a 71-acre partially-developed parcel of land, valued at \$17 million by the debtor. The debtor has disclosed 10 executory contracts in Schedule G but has represented to the trustee that there may be other contracts not listed in Schedule G.

11 U.S.C. § 365(d)(1) provides: "In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected."

This petition was filed on March 15, 2013. The last day of the 60-day deadline under 11 U.S.C. § 365(d)(1) expired on May 14, 2013, but the court continued the deadline to July 15, 2013 on June 25, 2013. As this motion was filed on July 12, 2013, it is timely under 11 U.S.C. § 365(d)(1).

Given the complexity of the case and the subject executory contracts, given the fact that there may be other executory contracts not disclosed by the debtor yet, given that the trustee needs additional time to assess the estate's interests in the executory contracts, and given that the contracts pertain to the debtor's largest asset, an approximately 71-acre parcel of partially-developed land valued at \$17 million, the court concludes that there is cause for the granting of the requested extension. The deadline will be extended to January 15, 2014. The motion will be granted.

31. 13-23225-A-7 LORRAINE LITTLE-DENNIS MOTION TO
SJS-4 CONVERT CASE
7-23-13 [72]

Final Ruling: The motion will be dismissed without prejudice as the court cannot confirm that all creditors were served with the motion as required by Fed. R. Bankr. P. 2002(a)(4). The proof of service for the motion refers to an attachment listing parties served with the motion, but there are no attachments to the proof of service. See Docket 75.

32. 12-37229-A-7 TIMOTHY FLOOD MOTION FOR
MBB-1 RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A. VS. 7-19-13 [84]

Final Ruling: The motion will be dismissed without prejudice as counsel for the trustee was not served with the motion. See Docket 90.

33. 13-29132-A-7 RUBEN NAVARRO MOTION FOR
KAZ-1 RELIEF FROM AUTOMATIC STAY
FEDERAL HOME LOAN MORTGAGE CORP. VS. 7-26-13 [20]

Final Ruling: The motion will be dismissed as unnecessary because the case was dismissed on July 30, 2013, dissolving the automatic stay. See 11 U.S.C. § 362(c)(2)(B). Retroactive relief or relief under 11 U.S.C. § 362(d)(4) has not been requested.

34. 13-26634-A-7 LANCE/SUMMER BUCK MOTION TO
KE-2 COMPEL ABANDONMENT
7-24-13 [21]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtors request an order compelling the trustee to abandon the estate's interest in their drafting and design business, Buck's Drafting and Design.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

According to the motion, the business assets consist of office furniture and equipment (two computers and a copy machine), as listed in item 28 of Schedule B. The assets have an aggregate value of \$650 and have been claimed fully exempt in Schedule C. Given the exemption claim, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

35. 13-26437-A-7 PACIFIC CREST DOOR CO, MOTION TO
DMW-2 INC SELL
7-25-13 [20]

Final Ruling: The motion will be dismissed without prejudice.

The motion does not comply with Local Bankruptcy Rule 9014-1 because when it was filed it was not accompanied by a separate proof of service. See Local Bankruptcy Rule 9014-1(e)(3). Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar.

The only separate proof of service associated with this motion is Docket 23, which does not say that any of the motion papers were served. It is a proof of service solely for an "Amended Petition and Dedacted [sic] Statement of Social Security Number."

Further, the court has been unable to locate in the notice of hearing any instructions for whether and when written opposition should be filed to the motion. Local Bankruptcy Rule 9014-1(d)(3) requires that the notice of hearing say whether and when written opposition must be filed. Docket 21.

36. 13-29543-A-7 LAMON SPENCER MOTION FOR
KAH-1 RELIEF FROM AUTOMATIC STAY
LO OAK HOLLOW, L.L.C. VS. 7-29-13 [17]

Final Ruling: The motion will be dismissed as unnecessary because the case was dismissed on August 6, 2013, dissolving the automatic stay. See 11 U.S.C. § 362(c)(2)(B). Retroactive relief or relief under 11 U.S.C. § 362(d)(4) has not been requested.

37. 11-24848-A-7 NEW DIRECTION SERVICES MOTION TO
DNL-3 APPROVE COMPENSATION OF TRUSTEE'S
COUNSEL (FEES \$5,926.50, EXP.
\$222.77)
7-19-13 [99]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$5,926.50 in fees and \$222.77 in expenses, for a total of \$6,149.27. This motion covers the period from April 9, 2012 through July

10, 2013. The court approved the movant's employment as the trustee's attorney on April 11, 2012. In performing its services, the movant charged hourly rates of \$195, \$350, and \$375.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assisting the estate with the sale of the debtor's non-cash assets, including, without limitation, equipment, software, inventory and receivables, (2) preparing sale agreement, (3) preparing and prosecuting a motion to sell the assets, and (4) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

38. 13-26551-A-7 MICHAEL HOLT
MDM-1
PRIVATE CAPITAL FUND, L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-29-13 [76]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Private Capital Fund, L.L.C., seeks relief from the automatic stay as to a real property in Las Vegas, Nevada. The movant has produced evidence that the property has a value of \$200,000 and it is encumbered by claims totaling approximately \$250,637. Dugan Decl.; Ex. A to Motion. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

39. 12-41256-A-7 DAVID HICKS AND NICOLE MOTION FOR
RCO-1 DWORK RELIEF FROM AUTOMATIC STAY
SETERUS, INC. VS. 7-22-13 [20]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted in part and dismissed as moot in part.

The movant, Seterus, Inc., seeks relief from the automatic stay as to a real property in Emerville, California.

Given the entry of the debtor's discharge on April 15, 2013, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of \$300,000 and it is encumbered by claims totaling approximately \$369,692. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

40. 13-23459-A-7 EVANGELINA AGUILAR MOTION TO
MMG-4 AVOID JUDICIAL LIEN
VS. MIDLAND FUNDING, L.L.C. 7-31-13 [49]

Final Ruling: The motion will be dismissed without prejudice as the respondent creditor was not served with the motion. The debtor has served only counsel for the respondent creditor. See Dockets 54 & 62. However, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

41. 13-23459-A-7 EVANGELINA AGUILAR MOTION TO
MMG-5 AVOID JUDICIAL LIEN
VS. CALVARY SPV, L.L.C. 7-31-13 [55]

Final Ruling: The motion will be dismissed without prejudice as the respondent creditor was not served with the motion. The debtor has served only counsel for the respondent creditor. See Dockets 60 & 64. However, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

42. 13-23380-A-7 DOUGLASS DUNN MOTION TO
DEF-2 AVOID JUDICIAL LIEN
VS. SEQUOIA CONCEPTS, INC. 7-25-13 [25]

Final Ruling: The motion will be dismissed without prejudice because the movant filed additional evidence in support of the motion 13 days after he filed the motion. The motion was filed on July 25, 2013 pursuant to the notice requirements of Local Bankruptcy Rule 9014-1(f)(1). The notice of hearing (Docket 26) requires written opposition to be filed 14 days prior to the August 26 hearing. Yet, on August 7, 19 days before the hearing on the motion, the debtor filed additional evidence in support of the motion. Dockets 31 & 32. This violates Local Bankruptcy Rule 9014-1(f)(1), which requires the motion in its entirety to be filed and served at least 28 days prior to the hearing on the motion.

43. 13-21291-A-7 JOSEPH/KRISTINE PIRONE MOTION TO
JWP-1 COMPEL ABANDONMENT
7-26-13 [45]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtors seek an order compelling the trustee to abandon the estate's interest in their real property in Fairfield, California. The property is over-encumbered.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate. The debtors have scheduled the value of the property at \$223,264. See Schedule A. The property is encumbered by a first deed of trust in favor of OneWest Bank in the amount of \$326,722 and a second mortgage in favor of Bank of America in the amount of \$89,729, for a total of \$416,451. Given the scheduled value of and encumbrances against the property, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

44. 13-24392-A-7 JAMES FREIBERG
NBC-2

MOTION FOR
EXEMPTION FROM FINANCIAL
MANAGEMENT COURSE
7-16-13 [25]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor's counsel asks the court to waive the requirement for the debtor to complete an instructional course on personal financial management before obtaining discharge. The debtor passed away on April 26, 2013, approximately one month after the filing of the instant petition. Because the debtor is deceased, the court will waive the requirement. The motion will be granted.

45. 13-28194-A-7 JOHN KING
BMW-1
VS. GRANT AND WEBER

MOTION TO
AVOID JUDICIAL LIEN
7-30-13 [10]

Final Ruling: The movant has provided only 27 days' notice of the hearing on this motion. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1). Docket 11. Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the motion. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the motion and, moreover, even appearing at the hearing.

In addition, the respondent creditor was not served with the motion. The debtor has served only counsel for the respondent creditor. See Docket 13. However, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). The motion will be dismissed without prejudice.

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee requests approval to employ Barry Spitzer as counsel for the estate. Mr. Spitzer will assist the estate with the sale of the debtor's interest in the probate estate of Jeanne E. Glaeser. The proposed compensation is a flat fee of \$1,750. The movant also requests approval of payment of the compensation, without further order of the court.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions."

The court concludes that the terms of employment and compensation are reasonable. Mr. Spitzer is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate, upon the completion of the services outlined above. The compensation will be approved.